Appendix A.

In the brief filed on March 4th, 1942, on behalf of the United States, in the Circuit Court of Appeals for the Third Circuit, in cases substantially identical, save in their formal features, with those at bar, viz., *United States* v. *Scaleggeri,* and five companion cases, there was appended as Appendix A a statement entitled "Historical setting for the Enactment of Title II of the Act of June 15, 1917, (40 Stat. 220, 50 U. S. C., secs. 191-193)."

The statement was described (p. 26) as having been

> "prepared at the direction of Francis M. Shea, Esquire, Assistant Attorney General, by Harold B. Finn, Esquire, Special Assistant to the Attorney General, for use in connection with the prosecution of certain libel proceedings pending in the District of New Jersey against the Italian vessels involved in criminal acts."

We reproduce here the pertinent part of that statement as to the time when, and circumstances under which, the engine machinery of the German ships tied up in our harbors in February, 1917, was damaged by their own crews (pp. 17-18):

"What is now history was fresh in the minds of the Congress that passed the legislation in the Spring of 1917. The facts were vividly brought to public attention by the daily press. Typical are the graphic accounts in the New York Times of the destruction of these vessels and of the helplessness of the Government to prevent it.

The issue of February 1st, 1917, carried news of the German declaration of unrestricted submarine warfare in the waters surrounding the British Isles and also a report that the crews of the interned vessels would attempt to scuttle the vessels or to destroy their machinery in the event of war. (New York Times, Feb. 1, 1917, p. 1, col. 1.)

The next day it was reported that guards had been placed around the vessels at New York, Jacksonville, San Francisco, New London, Baltimore, Philadelphia and Savannah. (New York Times, Feb. 2, 1917, p. 4, cols. 1, 4, 5.) The same

issue reported that two hours before the German note announcing unrestricted submarine warfare began arriving in this country, the commanding officers of the thirty vessels in New York Harbor were said to have received instructions to destroy their ship's papers and to remove various parts of the machinery so as to render the ships useless in the event of a German American break. (New York Times, Feb. 2, 1917, p. 4, col. 1.)

The next week's papers reported the wrecking of the engines of vessels at Boston, the Philippines and Hawaii. (New York Times, Feb. 5, 1917, p. 4, col. 2, 3; N. Y. Times, Feb. 7, 1917, p. 1, col. 2; New York Times, Feb. 7, 1917, p. 5, col. 5.)

The Times reported that Collector Malone of the Port of New York had requested permission from the various German Steamship companies to go below decks and had been refused, and thereafter decided not to press the matter. (New York Times, Feb. 7, 1917, p. 5, col. 5.)

The next day The Times reported that government men who had been excluded from the engine room of the vessel at New York had managed to slip past the ship's officers and had confirmed the damage to the vessel's machinery. (New York Times, Feb. 8, 1917, p. 2 col. 4.)''

To the foregoing statement of the United States Department of Justice, we may, by way of supplementing the same, add the following observations:

The sequence between the damage and the legislation is significant. The New York Times of February 7, carried a dispatch dated Washington, February sixth, reading in part as follows:

> ''Every one of the seventeen war-bound German ships examined by American officials at Philippine ports since the break with Germany has been damaged by her crew so badly that six months or more would be required to make any of these seaworthy. An official report today said that of the twenty-three vessels tied up in the islands all but six had been inspected, and none had been found which could be put into condition without a large expenditure of time and money.''
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> New York Times of Feb. 7, 1917, pp. 1, 5.

And on the following day but one, February 9, the New York Times carried the news, to a waiting nation, of the Judiciary Committee's reporting out "a bill designed expressly to prevent the destruction or damaging by their crews of German ships lying in American ports." And, the Bill so referred to was not what is now Title III, but, instead, what is now Title II (S. B. 6795).

The dispatch dated "Washington, Feb. 8," read as follows:

> "The Senate Judiciary Committee today reported out a bill designed expressly to prevent the destruction or damaging by their crews of German ships lying in American ports. The bill was approved today with thirteen others on which the Committee has been working under extra pressure for the last five days. All of them relate to the preservation of neutrality and the protection of American interests and property during war time. The Senate is expected to rush action on them.
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> "The bill to prevent the damaging of shipping gives comprehensive power to the Treasury Department to inspect, guard and even take full possession of vessels in American ports in times of Secretary deems it advisable (*sic*). The measure makes it a felony for the crews to injure them. It also has a provision to bar conspiracies on board the vessels.
>
> The bill provides that whenever the President shall declare a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance of the international relations of the United States, 'the Secretary of the Treasury may make rules governing the anchorage and movement of all foreign and domestic vessels in the territorial waters of the United States.'
>
> "The Secretary is 'empowered' to 'inspect such vessels at any time, to place guards on such vessels, and, if necessary in his opinion, in order to secure such vessels from damage or injury or to secure the observance of the obligations of the United States under the law of nations, or to maintain the national defense, he is

further authorized and empowered to take full possession and control of such vessels and to remove therefrom the officers and crew thereof and all of the persons not authorized by him to go or remain on board such vessels.'

"Section 2 provides that it shall be the duty of the 'owners, agents, masters, persons in charge, officers, and members of the crew,' to comply with the orders of this Government. Failure to comply or obstruction or interference will mean that the vessel will be subject to seizure and that the persons involved will be fined $10,000 or imprisoned two years.

"Section 3 provides that it shall be unlawful for the owners, master, or person in charge of any vessel 'to willfully cause or permit the destruction or injury of such vessel or knowingly to permit said vessel to be used as a place or resort for any person conspiring with another or preparing to commit any offense against the United States,' or in violation of the treaties or obligations of this country. Violation of this section involves the same penalty as that in Section 2.

"Among the other bills reported today was the espionage measure introduced by Senator Overman on Tuesday, which provides heavy penalties for furnishing information to foreign Governments in times of both peace and war. These measures were all drawn in co-operation with the officials of the Department of Justice."

New York Times of Feb. 9, 1917, p. 5.

The same issue of the Times carried a report of an appeal by Archibald R. Watson, of the New York bar, for the prosecution of the German officers and crews, for the damage done to their ships' machinery, under the State laws of New York and New Jersey; and a report of an interview had with Martin W. Littleton, of the same bar, pointing out that such laws did not apply when the damage was done with the consent of the owners.

Watson cited Section 1425 (par. 15) of the New York Penal Code (cited in Petitioners' Brief, pp. 39-40) and the

Public Laws of New Jersey, 1898, p. 834, as warranting the prosecution he urged. But, the Times continued,

> "Martin W. Littleton said yesterday that if it developed that any injury done to the German ships had been done with the consent of the owners the section of the Penal Code cited by Mr. Watson would not apply. Punishment could only be imposed, he pointed out, if it were discovered that 'malicious michief' was done by persons without the consent of the owners.
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> "This view of the case was understood by Mr. Watson, but he contends that only an investigation by the authorities will show who is responsible."

New York Times of Feb. 9, 1917, p. 5.